

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of: : Before the Examiner:
Challener et al. : Pyzocha, Michael J.
:
Serial No.: 10/016,792 : Group Art Unit: 2137
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REPLY BRIEF UNDER 37 C.F.R. §41.41

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This Reply Brief is being submitted in response to the Examiner's Answer dated January 19, 2007, with a two-month statutory period for response set to expire on March 19, 2007.

I. RESPONSE TO EXAMINER'S ARGUMENTS:

A. Response to Examiner's assertion that Teare teaches "providing a decryption key to a transmitter to be broadcasted within said defined distribution area of said broadcaster" as recited in claim 1 and similarly in claims 6 and 11, as discussed on pages 6-7 of Examiner's Answer.

The Examiner asserts that Teare teaches "providing a decryption key to a transmitter to be broadcasted within said defined distribution area of said broadcaster" as recited in claim 1 and similarly in claims 6 and 11. In particular, the Examiner states:

Teare discloses that the central facility may authorize the viewing of encrypted video signals when the plane is over 25,000 ft. and over a pre-designated area (see column 2 lines 36-42). This authorization is accomplished by transmitting (broadcasting) a decryption key to the plane (see column 2 lines 46-49). Since the plane is over the pre-designated area the key is broadcasted within the defined distribution area. Furthermore, as described in column 2 lines 58-62, Teare discloses that there can be multiple mobile nodes and therefore multiple defined distribution areas which each must be broadcasted a key. Therefore, Teare teaches a decryption key is broadcast within a defined distribution area of a broadcaster. Examiner's Answer, pages 6-7.

Appellants respectfully traverse. Teare teaches that the central facility may only authorize viewing of the encrypted video signal on an airplane if the plane is over 25,000 ft. altitude and over a predesignated area. Column 2, lines 40-42. Teare additionally teaches that the authorization would be accomplished by transmission of a code decryption key from the central facility 12 to remote node 11, where the encrypted signal would be decoded with the key. Column 2, lines 46-49. While Teare does teach a central facility transmitting a code decryption key to remote node to authorize viewing of an encrypted video signal on an airplane, there is no language in Teare that teaches that the code decryption key is transmitted by central facility 12 within a defined distribution area of central facility 12. The Examiner concludes that the code decryption key is transmitted by central facility 12 within a defined distribution area of central facility 12 based on the fact that the encrypted video signal is viewed if the plane is over 25,000 ft. altitude and over a predesignated area.

However, simply by having the plane over a predesignated area does not necessarily imply that the code decryption key is transmitted by central facility 12 within a defined distribution area of central facility 12. For example, what if the predesignated area was over the Atlantic Ocean which happened to be at least 300 miles from central facility 12. Further, let us assume that the airplane is over 25,000 ft. altitude at the time it reaches the Atlantic Ocean. Central facility 12 transmits the code decryption key to the airplane at the expected time the plane is suppose to reach the Atlantic Ocean (about 300 miles from central facility 12) based on the signature data it receives from the airplane which includes position information correlated with time (see column 2, lines 43-46). This code decryption key is not broadcasted within 300 miles from central facility 12 where other airplanes can intercept. Instead, the code decryption key is transmitted directly to the particular airplane based on the signature data it receives. There is no defined distribution area. Therefore, the Examiner has not presented a *prima facie* case of obviousness in rejecting claims 1, 6 and 11, since the Examiner is relying upon an incorrect, factual predicate in support of the rejection. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998).

B. Response to Examiner's assertion that Teare teaches "receiving said decryption key by one or more users of computer systems located within said defined distribution area of said broadcaster" as recited in claim 2 and similarly in claims 7 and 12, as discussed on page 8 of Examiner's Answer.

The Examiner asserts that column 2, lines 36-49 and column 3, lines 36-38 of Teare teaches "receiving said decryption key by one or more users of computer systems located within said defined distribution area of said broadcaster" as recited in claim 2 and similarly in claims 7 and 12. Appellants respectfully traverse. There is no language in Teare that teaches that remote node 11, which receives the code decryption key from the central facility 12, as discussed in column 2, lines 36-49 and column 3, lines 36-38 of Teare, is a user of a computer system. Instead, Teare specially teaches that remote node 11 is an aircraft, and the signals are video program material such as movies used as in-flight entertainment by the airline industry. Column 2, lines 12-15. Hence, Teare does not teach receiving a decryption key by

one or more users of computer systems located within a defined distribution area of a broadcaster. Therefore, the Examiner has not presented a *prima facie* case of obviousness in rejecting claims 2, 7 and 12, since the Examiner is relying upon incorrect, factual predicates in support of the rejection. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998).

C. Response to Examiner's assertion that Examiner's motivation for modifying Pezzillo to incorporate the missing claim limitations of claims 1, 6 and 11 is sufficient to establish a *prima facie* case of obviousness, as discussed on pages 9-10 of Examiner's Answer.

The Examiner reasserts that assertion that "to provide location-sensitive control over remote or mobile systems in a secure manner, without requiring secure facilities for the remote or mobile node (column 1, lines 34-37 of Teare)" is sufficient motivation for modifying Pezzillo to: (1) encrypt the digital packets of information; (2) transmit the encrypted digital packets of information over the Internet; and (3) provide a decryption key to a transmitter to be broadcasted within the defined distribution area of the broadcast (missing claim limitations of claims 1, 6 and 11). Examiner's Answer, pages 9-10.

The Examiner' motivation ("to provide location-sensitive control over remote or mobile systems in a secure manner, without requiring secure facilities for the remote or mobile node") does not provide reasons, as discussed further below, that the skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would modify Pezzillo to include the above-indicated missing claim limitations of claims 1, 6 and 11. Accordingly, the Examiner has not presented a *prima facie* case of obviousness for rejecting claims 1-15. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1458 (Fed. Cir. 1998).

As stated above, the Examiner cites column 1, lines 34-37 of Teare as support for the Examiner's motivation. Teare teaches that the object of the present invention is to provide location-sensitive control over remote or mobile systems in a secure manner, without requiring secure facilities for the remote or mobile node. Column 1, lines 34-37. There is no language in Teare (and in particular column 1, lines 34-37)

that makes any suggestion that by encrypting the digital packets of information; transmitting the encrypted digital packets of information over the Internet; and providing a decryption key to a transmitter to be broadcasted within the defined distribution area of the broadcast (missing claim limitations) that the result is to provide location-sensitive control over remote or mobile systems in a secure manner, without requiring secure facilities for the remote or mobile node. The Examiner has simply cited to the object of the invention section in Teare and then concludes that the Examiner has provided appropriate motivation. The Examiner has to provide some rationale connection between the cited passage that is the source of the motivation and the missing claim limitations. The Examiner's source of motivation (column 1, lines 34-37 of Teare) does not provide reasons as to why one skilled in the art would modify Teare to include the missing claim limitations of claims 1, 6 and 11. Accordingly, the Examiner has not presented a *prima facie* case of obviousness for rejecting claims 1-15. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1458 (Fed. Cir. 1998).

Further, Pezzillo addresses the problem of overriding an Internet station's program schedule and forcing a show or live event to occur at a specific time in the future as well as an automating DMCA/SRPC compliance and reporting method for Internet broadcasting and automatically controlling advertising inserts. Column 2, line 64 – column 3, line 7. The Examiner has not provided any reasons as to why one skilled in the art would modify Pezzillo, which overcomes the above-mentioned problems by enabling Internet or Intranet broadcasting that offers audio automation and webcast automation (Abstract), to: (1) encrypt the digital packets of information; (2) transmit the encrypted digital packets of information over the Internet; and (3) provide a decryption key to a transmitter to be broadcasted within the defined distribution area of the broadcast (Examiner admits that Pezzillo does not teach these limitations). The Examiner's motivation ("provide location-sensitive control over remote or mobile systems (e.g., aircraft) in a secure manner, without requiring secure facilities for the remote or mobile node") does not provide such reasoning.

Why would the reason to modify Pezzillo (whose purpose is to override an Internet station's program schedule and force a show or live event to occur at a

specific time in the future as well as an automating DMCA/SRPC compliance and reporting method for Internet broadcasting and automatically controlling advertising inserts) to: (1) encrypt the digital packets of information; (2) transmit the encrypted digital packets of information over the Internet; and (3) provide a decryption key to a transmitter to be broadcasted within the defined distribution area of the broadcast (Examiner admits that Pezzillo does not teach these limitations) be to provide location-sensitive control over remote or mobile systems (e.g., aircraft) in a secure manner, without requiring secure facilities for the remote or mobile node? Pezzillo is not concerned with providing location-sensitive control over remote or mobile systems (e.g., aircraft) in a secure manner, without requiring secure facilities for the remote or mobile node. The Examiner cites to column 8, lines 64-67 of Pezzillo as evidence that Pezzillo is concerned providing location-sensitive control over remote or mobile systems (e.g., aircraft) in a secure manner, without requiring secure facilities for the remote or mobile node. Examiner's Answer, page 10. However, Pezzillo teaches that server computers could be located at a remote location, such as server computer 244, which is connected to the Internet 234 through Internet connection 242 which is a secure connection. Column 8, lines 64-67. This does not provide evidence that Pezzillo is concerned providing location-sensitive control over remote or mobile systems (e.g., aircraft) in a secure manner, without requiring secure facilities for the remote or mobile node.

Hence, the Examiner's motivation does not provide reasons the skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would modify Pezzillo to include the missing claim limitations of claims 1, 6 and 11. Accordingly, the Examiner has not presented a *prima facie* case of obviousness for rejecting claims 1-15. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1458 (Fed. Cir. 1998).

D. Response to Examiner's assertion that Examiner's motivation for modifying Pezzillo to incorporate the missing claim limitations of claims 2-3, 5, 7-8, 10, 12-13 and 15 is sufficient to establish a *prima facie* case of obviousness, as discuss on pages 10-11 of Examiner's Answer.

The Examiner reasserts that assertion that "to provide location-sensitive control over remote or mobile systems in a secure manner, without requiring secure facilities for the remote or mobile node (column 1, lines 34-37 of Teare)" is sufficient motivation for modifying Pezzillo to: (1) receive a decryption key by one or more computer systems located within a defined distribution area of a broadcaster, as recited in claims 2, 7 and 12; (2) decrypt the encrypted digital packets of information using the decryption key, as recited in claims 3, 8 and 13; and (3) transmit the decryption key via electromagnetic waves within the defined distribution area of the broadcaster, as recited in claims 5, 10 and 15. Examiner's Answer, pages 10-11.

The Examiner's motivation ("to provide location-sensitive control over remote or mobile systems in a secure manner, without requiring secure facilities for the remote or mobile node") does not provide reasons, as discussed further below, that the skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would modify Pezzillo to include the above-indicated missing claim limitations of claims 2-3, 5, 7-8, 10, 12-13 and 15. Accordingly, the Examiner has not presented a *prima facie* case of obviousness for rejecting claims 2-3, 5, 7-8, 10, 12-13 and 15. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1458 (Fed. Cir. 1998).

As stated above, the Examiner cites column 1, lines 34-37 of Teare as support for the Examiner's motivation. Teare teaches that the object of the present invention is to provide location-sensitive control over remote or mobile systems in a secure manner, without requiring secure facilities for the remote or mobile node. Column 1, lines 34-37. There is no language in Teare (and in particular column 1, lines 34-37) that makes any suggestion that by receiving a decryption key by one or more computer systems located within a defined distribution area of a broadcaster; decrypting the encrypted digital packets of information using the decryption key; and transmitting the decryption key via electromagnetic waves within the defined distribution area of the broadcaster (missing claim limitations) that the result is to provide location-sensitive control over remote or mobile systems in a secure manner, without requiring secure facilities for the remote or mobile node. The Examiner has

simply cited to the object of the invention section in Teare and then concludes that the Examiner has provided appropriate motivation. The Examiner has to provide some rationale connection between the cited passage that is the source of the motivation and the missing claim limitations. The Examiner's source of motivation (column 1, lines 34-37 of Teare) does not provide reasons as to why one skilled in the art would modify Teare to include the missing claim limitations of claims 2-3, 5, 7-8, 10, 12-13 and 15. Accordingly, the Examiner has not presented a *prima facie* case of obviousness for rejecting claims 2-3, 5, 7-8, 10, 12-13 and 15. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1458 (Fed. Cir. 1998).

Further, Pezzillo addresses the problem of overriding an Internet station's program schedule and forcing a show or live event to occur at a specific time in the future as well as an automating DMCA/SRPC compliance and reporting method for Internet broadcasting and automatically controlling advertising inserts. Column 2, line 64 – column 3, line 7. The Examiner has not provided any reasons as to why one skilled in the art would modify Pezzillo, which overcomes the above-mentioned problems by enabling Internet or Intranet broadcasting that offers audio automation and webcast automation (Abstract), to: (1) receive a decryption key by one or more computer systems located within a defined distribution area of a broadcaster; (2) decrypt the encrypted digital packets of information using the decryption key; and (3) transmit the decryption key via electromagnetic waves within the defined distribution area of the broadcaster (Examiner admits that Pezzillo does not teach these limitations). The Examiner's motivation ("provide location-sensitive control over remote or mobile systems (e.g., aircraft) in a secure manner, without requiring secure facilities for the remote or mobile node") does not provide such reasoning.

Why would the reason to modify Pezzillo (whose purpose is to override an Internet station's program schedule and force a show or live event to occur at a specific time in the future as well as an automating DMCA/SRPC compliance and reporting method for Internet broadcasting and automatically controlling advertising inserts) to: (1) receive a decryption key by one or more computer systems located within a defined distribution area of a broadcaster; (2) decrypt the encrypted digital

packets of information using the decryption key; and (3) transmit the decryption key via electromagnetic waves within the defined distribution area of the broadcaster (Examiner admits that Pezzillo does not teach these limitations) be to provide location-sensitive control over remote or mobile systems (e.g., aircraft) in a secure manner, without requiring secure facilities for the remote or mobile node? Pezzillo is not concerned with providing location-sensitive control over remote or mobile systems (e.g., aircraft) in a secure manner, without requiring secure facilities for the remote or mobile node. The Examiner cites to column 8, lines 64-67 of Pezzillo as evidence that Pezzillo is concerned providing location-sensitive control over remote or mobile systems (e.g., aircraft) in a secure manner, without requiring secure facilities for the remote or mobile node. Examiner's Answer, pages 10-11. However, Pezzillo teaches that server computers could be located at a remote location, such as server computer 244, which is connected to the Internet 234 through Internet connection 242 which is a secure connection. Column 8, lines 64-67. This does not provide evidence that Pezzillo is concerned providing location-sensitive control over remote or mobile systems (e.g., aircraft) in a secure manner, without requiring secure facilities for the remote or mobile node.

Hence, the Examiner's motivation does not provide reasons the skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would modify Pezzillo to include the missing claim limitations of claims 2-3, 5, 7-8, 10, 12-13 and 15. Accordingly, the Examiner has not presented a *prima facie* case of obviousness for rejecting claims 2-3, 5, 7-8, 10, 12-13 and 15. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1458 (Fed. Cir. 1998).

E. Response to Examiner's assertion that the Teare reference is analogous prior art, as discussed on page 11 of Examiner's Answer.

The Examiner asserts that Teare addresses the problem of providing information to a small distribution base. Examiner's Answer, page 11. Appellants respectfully traverse and assert that Teare addresses the problem of providing location-sensitive control over remote or mobile systems in a secure manner, without requiring secure facilities for the remote or mobile node (aircraft). Column 1, lines

34-37; column 2, lines 12-13. Appellants, on the other hand, address the problem of enabling broadcasters to transmit information over the Internet to a smaller distribution base of listeners thereby lessening the amount of copyright royalty fees the broadcaster may be required to pay. Specification, page 2, lines 10-13. Hence, the Teare reference is not in the same field as Appellants' endeavor and is not reasonably pertinent to solving the problem of enabling broadcasters to transmit information over the Internet to a smaller distribution base of listeners thereby lessening the amount of copyright royalty fees the broadcaster may be required to pay. As a result, the Teare reference is not an analogous prior art and the Examiner has not established a *prima facie* case of obviousness in rejecting claims 1-15. M.P.E.P. §2141.01; 2143.01.

F. Response to Examiner's assertion that the Examiner has provided appropriate motivation for modifying Pezzillo and Teare to include the missing claim limitation of claims 4, 9 and 14, as discussed on pages 11-12 of Examiner's Answer.

As understood by Appellants, the Examiner asserts that the motivation to modify Pezzillo and Teare to include the missing claim limitation of claims 4, 9 and 14 comes from the knowledge of one of ordinary skill in the art. While the source of motivation for modifying a reference may be from the knowledge of persons of ordinary skill in the art, the Examiner is still required to provide evidence to show that such motivation comes from the knowledge of persons of ordinary skill in the art. *In re Lee*, 61 U.S.P.Q.2d 1430, 1435 (Fed. Cir. 2002). The Examiner's statement that the motivation comes from the knowledge of persons of ordinary skill in the art without providing any evidence is akin to asserting "common knowledge and common sense" which the Federal Circuit has clearly indicated is insufficient to support a *prima facie* case of obviousness. *Id.* Accordingly, the Examiner has not presented a *prima facie* case of obviousness for rejecting claims 4, 9 and 14. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1458 (Fed. Cir. 1998).

Further, the Examiner simply cites the definition of a transducer as motivation for modifying Pezzillo and Teare to include the missing claim limitation of claims 4,

9 and 14. Examiner's Answer, page 12. This is not a motivation. How does reciting a definition of a transducer provide a reason as why one skilled in the art would modify Pezzillo and Teare to reproduce the decrypted digital broadcast by an audio transducer (missing claim limitation of claims 4, 9 and 14)? The definition of a transducer does not provide reasons that the skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would modify Pezzillo to include the missing claim limitation of claims 4, 9 and 14. Accordingly, the Examiner has not presented a *prima facie* case of obviousness for rejecting claims 4, 9 and 14. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1458 (Fed. Cir. 1998).

G. Response to Examiner's assertion that the Examiner has provided appropriate motivation for modifying Franken with Schlossberg to include the missing claim limitations of claims 17, 20 and 23, as discussed on pages 12-13 of Examiner's Answer.

As understood by Appellants, the Examiner asserts that the motivation for modifying Franken with Schlossberg to include the missing claim limitations (capturing an Internet Protocol address of the requestor; converting the captured Internet Protocol of the requester into a computer name; and performing a trace of the request) of claims 17, 20 and 23 is to prevent a client in the Franken system from sending spoofed geographic location information in order to receive protected content. Examiner's Answer, page 13. There is no discussion in Franken of sending spoofed geographic location information. Neither is there any discussion in Franken of receiving protected content. Franken addresses the problem of delivering television and radio programming via the Internet while taking into consideration the well-established territorial restrictions. [0005-0007].

Why would the reason to modify Franken (whose purpose is to deliver television and radio programming via the Internet while taking into consideration the well-established territorial restrictions) to capture an Internet Protocol address of the requester; to convert the captured Internet Protocol of the requester into a computer name; and to perform a trace of the request (Examiner admits that Franken does not

teach these limitations) be to prevent a client in the Franken system from sending spoofed geographic location information in order to receive protected content? Franken is not concerned with preventing a client in the Franken system from sending spoofed geographic location information in order to receive protected content. The Examiner cannot completely ignore the teachings of Franken in concluding it would have been obvious to modify Franken to include the missing claim limitations of claims 17, 20 and 23. Hence, the Examiner's motivation does not provide reasons that the skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would modify Franken to include the missing claim limitations of claims 17, 20 and 23. Accordingly, the Examiner has not presented a *prima facie* case of obviousness for rejecting claims 17, 20 and 23. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1458 (Fed. Cir. 1998).

Further, the Examiner cites paragraph [0054], lines 17-28 of Schlossberg as support for the Examiner's motivation. However, Schlossberg teaches that the reason for typically installing the Reconnaissance Unit 121 outside of the network being protected is to permit the unit to obtain information and identify the attacker 140 and his/her capabilities without the attacker 140 knowing this information is being gathered by the network he/she is attacking. [0054]. Schlossberg further teaches that the Reconnaissance Unit 117 notifies the owner of the security system and generates a detailed report to the network security personnel with information, such as the MAC/IP address the attacker is using, the attacker's machine DNS name, the attacker's physical location, and other pertinent information. [0054]. There is no language in paragraph [0054] of Schlossberg that supports preventing a client in the Franken system from sending spoofed geographic location information in order to receive protected content (Examiner's motivation). Neither is there any language in paragraph [0054] of Schlossberg that provides reasons that the skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would modify Franken to include the missing claim limitations of claims 17, 20 and 23. Accordingly, the Examiner has not presented a *prima facie* case

of obviousness for rejecting claims 17, 20 and 23. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1458 (Fed. Cir. 1998).

Further, what is the rationale connection between preventing a client in the Franken system from sending spoofed geographic location information in order to receive protected content (Examiner's motivation) and capturing an Internet Protocol address of the requestor; converting the captured Internet Protocol of the requester into a computer name; and performing a trace of the request (missing claim limitations)? The Examiner has to provide some rationale connection between the Examiner's motivation and the missing claim limitations. Hence, the Examiner's motivation does not provide reasons as to why one skilled in the art would modify Franken to include the missing claim limitations of claims 17, 20 and 23. Accordingly, the Examiner has not presented a *prima facie* case of obviousness for rejecting claims 17, 20 and 23. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1458 (Fed. Cir. 1998).

H. Other matters raised by the Examiner.

All other matters raised by the Examiner have been adequately addressed above and in Appellants' Appeal Brief and therefore will not be addressed herein for the sake of brevity.

II. CONCLUSION:

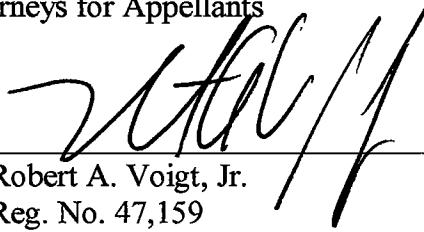
For the reasons stated above and in Appellants' Appeal Brief, Appellants respectfully asserts that the rejections of claims 1-15, 17-18, 20-21 and 23-24 are in error. Appellants respectfully request reversal of the rejections and allowance of claims 1-15, 17-18, 20-21 and 23-24.

Respectfully submitted,

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